Petition

81-1670

No.

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IN THE

Supreme Court of the United States

October Term, 1981

IN THE MATTER OF:

The Complaint of BANKERS TRUST COMPANY, as Owner Trustee and MONSANTO COMPANY, as Chartered Owner and KEYSTONE SHIPPING CO., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability

BANKERS TRUST COMPANY, MONSANTO COMPANY and KEYSTONE SHIPPING CO.,

Petitioner,

BP OIL, INC. and SOHIO PETROLEUM COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Must an appellate court rely solely on evidence of record to reverse facts found by a district court or may it rely on representations wholly outside the trial record? [1]

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1. Parties to the proceeding in the United States Court of Appeals for the Third Circuit were: Bankers Trust Company, Monsanto Company and Keystone Shipping Co., as owners and operators of the SS. EDGAR M. QUEENY; Villaneuva Compania Naviera, S.A., as owner and operator of the S.T. CORINTHOS; BP Oil Inc., as operator/lessee of a pier and refinery facility at Marcus Hook, Pennsylvania; and Sohio Petroleum Company, as the owner/lessor of that same pier and refinery facility at Marcus Hook.

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OPINIONS

The Opinion of the United States District Court for the Eastern District of Pennsylvania is reported as: *Complaint of Bankers Trust Co.*, 503 F. Supp. 350 (E. D. Pa. 1980). (A21)

The Opinion of the United States Court of Appeals for the Third Circuit is reported as: *Matter of Bankers Trust Co.*, 658 F. 2d 103 (3d Cir. 1981). (A1)

JURISDICTION

On August 13, 1981, the United States Court of Appeals for the Third Circuit rendered the judgment which petitioner seeks to have reviewed. On August 28, 1981, that court granted the motion of Bankers Trust Company, Monsanto Company and Keystone Shipping Co. for an extension of time to file a petition for rehearing to September 28, 1981. Petitioner's petition for rehearing before that court *en banc* was filed on September 28, 1981. On October 8, 1981, the United States Court of Appeals for the Third Circuit denied petitioner's petition for rehearing *en banc*.

On December 23, 1981, petitioner applied to this Court for an extension of time in which to file a petition for writ of certiorari. On December 28, 1981, Justice William J. Brennan, Jr. signed an Order extending petitioner's time to and including March 7, 1982. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1) (1976).

STATEMENT OF THE CASE

This case arises out of a collision which occurred on the Delaware River at Marcus Hook, Pennsylvania, during the early morning hours of January 31, 1975, when the chemical carrier SS. EDGAR M. QUEENY (hereinafter QUEENY), while making a turn in the river, struck the steam tanker S.T. CORINTHOS (hereinafter CORINTHOS), as she was discharging a cargo of crude oil at the BP/Sohio Terminal,[2] Marcus Hook, Pennsylvania. The resulting explosion and fire damaged the QUEENY, destroyed and sank the CORINTHOS, caused extensive property damage to the BP/Sohio Terminal as well as surrounding property owners in the Marcus Hook area, and caused numerous deaths and injuries.[3]

As a result of this collision, Bankers Trust Company, Monsanto Company and Keystone Shipping Co. (hereinafter collectively Keystone), owners and operators of the QUEENY, along with Villaneuva Compania Naviera S.A. (hereinafter Villaneuva), owner and operator of the CORINTHOS, filed petitions for exoneration from or limitation of liability[4] pursuant to the Limitation of Liability Act.[5] Both Keystone and Villaneuva were damage claim-

2. The terminal in Marcus Hook was owned by Sohio Petroleum Company and operated by BP Oil, Inc. They are collectively referred to herein as BP/Sohio.

3. The events leading up to the collision are not in dispute and this petition will adopt the facts as set forth in the opinion of the court of appeals in the liability stage of these proceedings. See *Complaint of Bankers Trust Co.*, 651 F. 2d 160, 164-166 (3d Cir. 1981).

4. United States District Court for the Eastern District of Pennsylvania, Civil Action Nos. 75-364 and 75-2110. The jurisdiction of the district court was exercised pursuant to the admiralty and maritime jurisdiction of the federal courts. 28 U. S. C. § 1333 (1949).

5. 46 U. S. C. § 183 et seq. (1976).

ants in each other's limitation proceeding as were those who suffered injury or loss, including BP/Sohio, owner and operator of the terminal where the CORINTHOS was located.[6]

At trial on the liability issues raised in the petitions for limitation and the claims asserted by the three major parties,[7] the district court held that Keystone's petition for limitation of liability was denied.[8] At trial on the damage issues, the district court entered judgment in favor of BP/Sohio and against Keystone in the amount of $16,188,531.00 and denied BP/Sohio prejudgment interest.[9]

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6. In addition to these proceedings, a product liability action was filed by BP/Sohio against Bethlehem Steel Corporation, General Electric Company and The William Powell Company. See Complaint of BP Oil, Inc. and Sohio Petroleum Company, filed July 8, 1977, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 77-2362. Villaneuva filed a third-party complaint in the QUEENY limitation proceeding against Bethlehem Steel Corporation, General Electric Company and The William Powell Company. See Third Party Complaint of Villaneuva Compania, Naviera, S.A., filed July 19, 1978, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 75-364.

These defendants, collectively referred to as the products or third party defendants, variously participated in the design and construction of the QUEENY, her turbine set and controls, and the astern guardian valve. Upon motion by the product liability/third party defendants at the time of trial, the product liability action was severed and stayed pending the resolution of the limitation actions. *Complaint of Bankers Trust Co.*, 651 F. 2d at 166, n. 5.

7. The issue of damages was bifurcated from the issue of liability. *Complaint of Bankers Trust Company*, 503 F. Supp. 350, 351 (E. D. Pa. 1980); see A22. The appeal leading to this petition has arisen from the trial on damages.

8. 503 F. Supp. at 351-352; see A22-23.

9. 503 F. Supp. at 353; see A26, A47. "At that trial, BP/Sohio and the QUEENY interests submitted to the court a document en-

The district court succinctly stated its reasons for denying prejudgment interest:

> Reviewing all of the circumstances of this case, with the wide variance between the estimate of damage and the provable damage, which provable damage was not resolved until more than five years after the accident, and the delays in bringing this case to trial, the Court is of the opinion that there should be no allowance of prejudgment interest.[10]

BP/Sohio appealed to the United States Court of Appeals for the Third Circuit. On August 13, 1981, that court, through Chief Justice Seitz, Judge Aldisert and Judge Gibbons, reversed the district court's denial of prejudgment interest to BP/Sohio.[11] The court further es-

9. (Cont'd)
titled 'Offer of Proof of Claim in Lieu of Trial.' That document contained a stipulation authorizing the court to enter judgment at the conclusion of the damages trial in BP/Sohio's favor against the QUEENY interests." 503 F. Supp. at 352; see A23.

10. *Complaint of Bankers Trust Company*, 503 F. Supp. at 353; see A26.

As to Villaneuva, the district court entered judgment in favor of Villaneuva and against Keystone in the amount of $3,073,934.80 and denied Villaneuva prejudgment interest. 503 F. Supp. at 353-358; see A38, A47.

11. 658 F. 2d at 111; see A20.

Keystone maintains an interest in the distribution of the QUEENY's limitation fund because it stands in the same position, with respect to the limitation fund, as would each claimant with whom Keystone has reached settlement. Pro Tanto Order, signed by Judge Charles Weiner of the United States District Court for the Eastern District of Pennsylvania, dated July 18, 1979. See Trial Transcript July 18, 1979, pp. 57-58 and July 19, 1979, p. 39. Keystone has reached settlement with personal injury and property damage claimants in aggregate total of approximately $17,000,000.

tablished 10.5% as the rate of prejudgment interest.[12] The court remanded the action to the district court. On August 27, 1981, the Court of Appeals granted Keystone's motion for an extension of time in which to file a petition for rehearing.[13] Keystone filed a petition for rehearing before the court *en banc* on September 28, 1981 wherein its grievance with the result was succinctly put.[14] The court denied that petition on October 8, 1981.[15]

On December 23, 1981, petitioner applied to this Court for an extension of time in which to file a petition for writ of certiorari. On December 28, 1981, Justice William J. Brennan, Jr. signed an order extending petitioner's time to and including March 7, 1982.[16] This petition for a writ of certiorari followed.

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12. 658 F. 2d at 112; see A18. As to Villaneuva, the court of appeals upheld the district court's valuation of the CORINTHOS and further upheld the denial of prejudgment interest to Villaneuva. 658 F. 2d at 112; see A19.

13. A56.

14. "Now COMES one 'justifiably surprised and irate' litigant. Aldisert, *The Judicial Process*, p. 759 (1976).

A district court has been held to have 'misused' its discretion in denying prejudgment interest, i.e. 'no reasonable man would take the view adopted by the trial court.' *Id.* at 759-760. After reviewing the finding of the district court, the panel here was apparently 'left with a *definite* and *firm* conviction that a mistake ha[d] been committed.' *Speyer v. Humble Oil and Refining Co.*, 403 F. 2d 766, 769 (3d Cir. 1968), cited in *Sun Oil Company v. Humble Oil and Refining Co.*, 431 F. 2d 1119, 1121 (3d Cir. 1970). (Emphasis added). The district court's conclusion was held unsupported by the record, so the panel went *outside* the record to make its own findings in search of a different result. The panel has upset the district court's findings, substituted its own findings, and left nary a clue as to what limits the district court should follow in the future. *Id.* at 759." Petition for Rehearing on behalf of Bankers Trust Company, Monsanto Company and Keystone Shipping Co.

15. A59.

16. A62.

ARGUMENT

The decision of the court of appeals overturns the basic factfinding function of the district court. After considering representations outside the trial record, the appellate court substituted its own judgment on an issue peculiarly sensitive to the personal knowledge of the trial court, namely: whether a party had acted unreasonably in the litigation of its claim.

In support of its petition for a writ of certiorari, petitioner respectfully asserts as follows:

The Decision Below Constitutes a Radical Departure From Established Practice and Precedent as to What Matters Are Properly to Be Considered on Review

At issue in this petition is whether a circuit court of appeals must confine its review to evidence of record. Specifically, does the lower court's reliance upon representations wholly outside the trial record conflict with established practice and precedent.

The lower court's reversal of the district court's denial of prejudgment interest is founded upon matters wholly outside the trial record. The court below adopted a narration of settlement negotiations presented by BP/Sohio in its briefing of the appeal. BP/Sohio's narration contained not a single reference to testimony or exhibits admitted at trial. The court adopted every representation in BP/Sohio's appellate briefs because Keystone refused to argue the veracity or accuracy of statements unsupported by the record.[17] The court of appeals made findings as to "what

17. "The QUEENY interests note that their pretrial settlement offer *is not part of the record, but they do not dispute the accuracy* of the $3 million figure." *Complaint of Bankers Trust Co.*, 658 F. 2d at 111, n. 3; see A16 n. 3. (Emphasis added). If an affirmative record is required to support the discretionary award of prejudgment interest in admiralty, that record may only be compiled before the trial court.

really happened" during the settlement conferences to which they were never party and of which there is no record.[18]

With but one exception, not one dollar amount cited in the court's decision is found in the trial record.[19] No exhibit is mentioned in the court of appeals' decision; no testimony is referenced in the court of appeals' decision.[20] Not one shred of evidence in the trial record supports the segmented narration of settlement negotiations relied upon by the court below.

The decision below completely ignores all traditional bounds placed on its review of the facts, therein threatening to usurp the trial court's role as factfinder. Appellate review free of factual constraints is not "review"; it is the classic example of trial de novo.

The principle here ignored by the lower court is elementary and inherent within the definition of appellate review. Other courts have rarely articulated the principle because its existence is in every case presumed. As shown below, those courts which address the issue treat it as a momentary diversion from their review of the trial record.

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18. See, e.g., "BP/Sohio asserts that during the course of the extensive bargaining process . . . it withdrew certain items of damages in an effort to reach an agreement", *Id.* at 111, see A16; "the QUEENY interests apparently were unwilling to settle", *Id.* at 111, see A16; "the QUEENY interests never offered to settle for more than $3 million", *Id.* at 111 n. 3, see A16 n. 3.

19. The court of appeals correctly states the stipulated amount of BP/Sohio's provable damages as $16.19 million. *Complaint of Bankers Trust Co.*, 658 F. 2d at 106; see A5.

20. Petitioner submits that review of the record will quickly reveal the absence of acutal settlement negotiations contained therein. The Clerk of the Third Circuit Court of Appeals has certified and filed with the Clerk of this Court a copy of the record compiled in litigation of the damages issues. See Joint Appendix to the Briefs, *Complaint of Bankers Trust Co.*, No. 80-2367 (3d Cir. August 13, 1981).

In *Rosen v. Lawson-Hemphill, Inc.*,[21] the court refused to consider any factual representations contained in Lawson's appellate briefs as to matters not in the record. The court noted: "It is elementary that the rights of the parties are, for purposes of this appeal, determined on the basis of the materials that constitute the record on appeal. See Fed. R. App. P. 10(a)." [22] Further, in *United States v. Mills*,[23] the court found attorneys' affidavits, prepared during briefing of the appeal and purporting to reflect recollections of a pretrial conference, were not part of the record on appeal.[24] Accordingly, appellate review could not encompass the affidavits.[25]

These decisions are not presented to exhibit conflict between the circuits, indeed the issue here presented is uniform throughout the courts. Rather, these decisions illustrate the departure by the court below from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision.[26]

The decision below encourages parties to refrain from presenting all evidence before the trier of fact, waiting until appeal to present "evidence" in its brief, evidence which an opposing party cannot dispute either because of the conceptual limits of an appellate brief or because of prejudice caused by untimely notice. The appellate courts are ill-equipped to conduct factfinding through their briefing and argument procedure.

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21. 549 F. 2d 205 (1st Cir. 1976).

22. *Id.* at 206.

23. 597 F. 2d 693 (9th Cir. 1979).

24. *Id.* at 697-698.

25. *Id.*

26. Sup. Ct. R. 17.1(a).

Moreover, in admiralty, inquiry into the award of prejudgment interest focuses upon a party's conduct in litigating the dispute, rather than the dispute itself. The decision below requires litigants to present affirmative evidence of a party's unreasonable conduct during litigation of the dispute, i.e. parties must litigate the litigation. The trial court must hear evidence on how the litigation has been conducted. Presenting such proof is an unnecessary repetition of matters wholly within the trial court's knowledge, placing at issue the manner in which parties have acted to resolve the ultimate dispute.[27]

Requiring a record of a party's alleged bad faith ignores the presence of the trial judge throughout litigation and his role as a catalyst for prompt and proper resolution of all disputes.[28] In addressing a judicial conference, Honorable Hubert L. Will [29] stated:

> There is probably no aspect of the art of judging which is more personal, more subjective in the sense both that each judge does it his or her own way, and also with respect to the extent that a judge participates in settlement negotiations.
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> • • •

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27. In cases akin to this proceeding, where the parties have stipulated the amount of provable damages, the issue of prejudgment interest is the only point of dispute. Therefore only evidence of bad faith and of the appropriate rate of interest need be litigated.

28. Throughout this litigation and in the Eastern District of Pennsylvania generally, pretrial conferences serve as forums for extensive settlement discussion. Many district judges assume a coordinating role in settlement negotiations in addition to their supervising role in the discovery stage.

29. United States District Judge, Northern District of Illinois, Chicago, Illinois.

> We are catalysts in settlement. Our role is not that of a traditional judge. Our role at that stage is that of a mediator.[30]

The court below has emasculated the discretion of the trial court, establishing a regimen of explicit proof in place of a trial court's discretionary judgment. The adverse impact of this decision on the vitality of trial court discretion is clear. Further, the appellate court's independent fact-finding constitutes the sort of departure from established practice and precedent which should not stand unless sanctioned by this Court.

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30. Address by Honorable Hubert L. Will, *The Role of the Judge in the Settlement Process*, 75 F. R. D. 89, 89-91 (1978); Cf. Title, *The Lawyer's Role in Settlement Conferences*, 67 A. B. A. J. 592 (1981).

CONCLUSION

Bankers Trust Company, et al., respectfully prays the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Appendix

Opinion of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company, as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability and Villaneuva Compania Naviera, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company, and The William Powell Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444; BP Oil Inc. and Sohio Petroleum Company, Appellants in No. 80-2367; In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants v. British Petroleum, Ltd., BP Oil Inc. and Sohio Petroleum Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444, Filed August 13, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2366, 80-2367 and 80-2444

In the Matter of the Complaint of BANKERS TRUST COMPANY As Owner-Trustee and Monsanto Company As Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs,

v.

BETHLEHEM STEEL CORPORATION, General Electric Company, and The William Powell Company, Third-Party Defendants.

Appeal of VILLANEUVA COMPANIA NAVIERA, S.A., in Nos. 80-2366, 80-2444.

Appeal of B.P. OIL INC. and Sohio Petroleum Company in No. 80-2367.

In the Matter of Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, ROYAL GLOBE INSURANCE COMPANY, Intervenor Plaintiff.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and Insurance Company of North America

v.

BETHLEHEM STEEL CORPORATION and General Electric Company and The William Powell Company, Third-Party Defendants,

v.

BRITISH PETROLEUM, LTD.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants,

Appeal of VILLANEUVA COMPANIA NAVIERA, S.A., in Nos. 80-2366, 80-2444.

Argued April 22, 1981.

Decided Aug. 13, 1981.

Rehearing and Rehearing In Banc Denied Oct. 8, 1981.

Before SEITZ, *Chief Judge*, and ALDISERT and GIBBONS, *Circuit Judges*.

OPINION OF THE COURT

SEITZ, *Chief Judge*.

Villaneuva Compania Naviera, S.A. (Villaneuva) appeals from an order of the district court setting the market value of the ship CORINTHOS at $2.73 million and denying Villaneuva prejudgment interest. BP Oil, Inc. and Sohio Petroleum Company (BP/Sohio) appeal from an order of the district court denying BP/Sohio prejudgment interest and applying the legal rate of interest in Pennsylvania to the postjudgment interest award.

I.

On January 31, 1975, the chemical tanker S.S. EDGAR M. QUEENY struck the crude oil tanker CORINTHOS in the Delaware River at Marcus Hook, Pennsylvania. The CORINTHOS, which was discharging a cargo of crude oil at the BP/Sohio terminal in Marcus Hook, exploded and caught fire. Twenty-six persons were killed, and the CORINTHOS was destroyed. In addition, the BP/Sohio terminal sustained extensive damage.

Soon after the collision, the owners and operators of the QUEENY, Bankers Trust Company, Monsanto Company, and Keystone Shipping Company (the QUEENY interests), filed a petition for exoneration from or limitation of liability pursuant to 46 U.S.C. § 183 *et seq.* (1976). Villaneuva, owner of the CORINTHOS, filed a similar petition a few months later. The district court bifurcated the proceedings, holding separate trials on the liability and damage issues. In its decision on the liability issues, the court denied the petition for limitation of liability filed by the QUEENY interests. It concluded, however, that Villaneuva was entitled to limited liability even though it negligently failed to use an inert gas system while unloading the CORINTHOS. The court found that an act of Congress preempted it from finding liability on this ground.

After the trial on the damage issues, the district court found that the market value of the CORINTHOS at the time of the collision was $2.73 million, not $7.98 million as Villaneuva contended. The court also found that Villaneuva's total damages were $3.07 million, and it entered judgment against the QUEENY interests in that amount. Pursuant to a stipulation between BP/Sohio and the QUEENY interests, the court also entered judgment in favor of BP/Sohio and against the QUEENY in-

terests in the amount of $16.19 million. The court found, however, that neither Villaneuva nor BP/Sohio were entitled to prejudgment interest on the damages awarded to them. Finally, the court held that postjudgment interest would be at the legal rate of interest in Pennsylvania.

The parties filed separate appeals from the liability and damage orders of the district court, 503 F.Supp. 350 (D.C.). On May 15, 1981, a panel of this court reversed the district court's denial of the limitation of liability petition filed by the QUEENY interests. *See In re Bankers Trust Co.*, (3d Cir. 1981); 651 F.2d 160. The panel also reversed the district court's holding that an act of Congress preempted it from finding that Villaneuva was at fault. Nevertheless, the panel found that the district court's alternative holding that the CORINTHOS was unseaworthy was erroneous. The present appeals concern the district court's damage award. We must determine whether the district court erred in (1) finding that the market value of the CORINTHOS at the time of the collision was $2.73 million, (2) denying Villaneuva and BP/Sohio prejudgment interest, and (3) awarding postjudgment interest at the legal rate of interest in Pennsylvania.

II.

Villaneuva's damages for the loss of the CORINTHOS must be measured by the fair market value of the ship at the time of its destruction. Fair market value "is established by contemporaneous sales of like property," *Standard Oil of New Jersey v. Southern Pacific Co.*, 268 U.S. 146, 155, 45 S.Ct. 465, 467, 69 L.Ed. 890 (1925), but in the absence of such a market, a court should consider other factors to determine "the sum that in all probability would result from fair negotiations between an owner willing to sell and a purchaser desiring to buy," *id.* at

155-56, 45 S.Ct. at 467. The parties agree that the district court's finding that the value of the CORINTHOS was $2.73 million on the date of the collision cannot be overturned unless it was clearly erroneous. We therefore will proceed on the assumption that the Federal Rule of Civil Procedure 52(a) is applicable. We emphasize that our role when reviewing a district court's factual findings under rule 52(a) is not to "substitute findings we could have made had we been the fact-finding tribunal; our sole function is to review the record to determine whether the findings of the District Court were clearly erroneous, i.e., whether we are 'left with the definite and firm conviction that a mistake has been committed.'" *Speyer, Inc. v. Humble Oil & Refining Co.*, 403 F.2d 766, 770 (3d Cir. 1968), *cert. denied*, 394 U.S. 1015, 89 S.Ct. 1634, 23 L.Ed.2d 41 (1969) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948)).

Villaneuva contends that the district court's evaluation finding was clearly erroneous because it was based upon a contemporaneous sales market established by the sale of only one ship, the GOLAR MARTITA. According to Villaneuva, the evidence established that there was no market for a ship like the CORINTHOS on January 31, 1975. Therefore, it asserts, the district court should have determined the value of the CORINTHOS by considering factors such as the amount of insurance on the ship, its reputation for dependability, its life expectancy, the opinions of qualified ship appraisers, and the value of the ship's charter. Villaneuva also argues that the district court erred even if it only used the sale of the MARTITA for comparison purposes because the MARTITA was not similar to the CORINTHOS and its sale was not an arm's length transaction.

Villaneuva characterizes the district court's reliance on the sale of the MARTITA as a finding by the court that a contemporaneous sales market for ships like the CORINTHOS existed at the time of the collision. It contends that a contemporaneous sales market cannot be established by the sale of only one ship. *Cf. Barton v. Borit,* 316 F.2d 550, 553 (3d Cir. 1963) (sales of like vessels must be "numerous enough to afford reliable evidence of the value of such vessels"). Villaneuva asserts that the district court erred because in the absence of a contemporaneous sales market it must consider other relevant factors.

We cannot say, however, that the district court's apparent finding that a contemporaneous sales market existed was clearly erroneous. Evidence in the record demonstrated that there was a market, albeit a poor market, for ships like the CORINTHOS at the time of the collision. The expert witnesses for Villaneuva and the QUEENY interests based their valuations on an examination of a number of sales of similar vessels close in time to the destruction of the CORINTHOS. Moreover, we believe that Villaneuva is incorrect in arguing that the district court based its valuation finding solely on the existence of a contemporaneous sales market. The court emphasized that it had to determine what the CORINTHOS "probably" could have been sold for by taking into consideration all appropriate factors. Thus, the court considered the opinions of qualified ship appraisers and the value of the CORINTHOS' charter as well as factors differentiating the CORINTHOS from the MARTITA. The district court did not expressly examine factors such as the amount of insurance on the CORINTHOS and its reputation for dependability, but we do not believe that the failure to consider these factors constituted error. *Cf. Standard Oil of New Jersey,* 268 U.S. at 156, 45 S.Ct. at 467 (valuation "not controlled by artificial rules;" what is

required is "reasonable judgment" based on the relevant facts).

Villaneuva contends that even if a contemporaneous sales market for ships like the CORINTHOS existed at the time of the collision, the district court erred in using the MARTITA as a guide for determining the market value of the CORINTHOS. According to Villaneuva, the MARTITA was substantially different from the CORINTHOS, and its sale was not an arm's length transaction because the QUEENY interests' expert witness, a ship broker named Robert Pierot, represented both the buyer and the seller. Villaneuva argues that instead of relying on the MARTITA transaction, the court should have adopted the market value set by Villaneuva's expert witness, Eric Bates, which was based upon the sale of the THORHILD.

The district court found that the market value set by Bates was "grossly overstated" because it failed to take into account key differences between the THORHILD and the CORINTHOS. The CORINTHOS was a steam-turbine vessel, but the THORHILD was a motor vessel. As the court emphasized, rapidly escalating fuel costs at the time of the collision made the fuel efficient motor vessels more valuable than steam-turbine vessels. In addition, there was evidence indicating that the price of the THORHILD was inflated because of favorable credit terms extended in its sale. Furthermore, Pierot testified that the THORHILD was sold over two months before the destruction of the CORINTHOS, and he emphasized that the market for tankers had declined substantially during this two month period.

The MARTITA, on the other hand, was also a steam-turbine vessel, and it was sold for $1.2 million on the day of the collision. The vital statistics of the MARTITA were generally similar to those of the CORINTHOS, and those

that were different, such as age, speed, and deadweight tonnage, were considered by the district court when it adjusted the $1.2 million sales price of the MARTITA to reach a market value of $2.73 million for the CORINTHOS Villaneuva argues that the sale of the MARTITA "was not influenced in any way by valid market conditions" because Pierot acted as broker for both the buyer and the seller. However, there was testimony indicating that it was common in the ship brokerage business for brokers to perform such a dual function, and we do not believe that Pierot's role by itself demonstrates that the sale of the MARTITA was not an arm's length transaction. Given the evidence detailed above, we conclude that the district court's valuation finding was not clearly erroneous.

Finally, Villaneuva argues that if the district court's analysis is upheld, the market value of the CORINTHOS should be increased by over $1 million because the court's calculations were incorrect. To determine the CORINTHOS' market value, the court adjusted the sales price of the MARTITA by applying the calculation method used by Bates. Using this method, but substituting the MARTITA for the THORHILD, the court arrived at a value of $1.61 million. Because it believed that this figure understated the value of the CORINTHOS, the district court added in factors representing the differences in age, speed, and deadweight tonnage between the MARTITA and the CORINTHOS. After adding in these "enhancement" factors, the court found that the market value of the CORINTHOS was $2.73 million, over $1.1 million more than it believed the Bates method yielded.

Villaneuva notes that if the court had correctly applied the calculation method used by Bates, it would have added in age and speed in order to reach the "Bates" value, thus arriving at a base figure of $2.22 million instead of $1.61 million. As a result, Villaneuva contends

that this court should correct the district court's base figure to $2.22 million and then add in the same enhancement factors used by that court. This would result in a final value of $3.74 million. Villaneuva's argument, however, assumes that if the district court had applied the Bates method correctly and reached a base figure of $2.22 million, it would have added in age and speed again to reach an enhanced value. We believe that it is more reasonable to assume that the district court intended to compensate for those factors only once in its calculations. Thus, we decline Villaneuva's invitation to "correct" the district court's calculations.

III.

Villaneuva and BP/Sohio contend that the district court erred in failing to grant prejudgment interest on the damages awarded to them. The rule in admiralty is that prejudgment interest should be awarded unless there are exceptional circumstances that would make such an award inequitable. *See, e. g., Alkmeon Naviera, S.A., v. M/V Marina L,* 633 F.2d 789, 797 (9th Cir. 1980); *Noritake Co. v. M/V Hellenic Champion,* 627 F.2d 724, 728 (5th Cir. 1980). Generally, exceptional circumstances exist only when the district court concludes that the party requesting interest has (1) unreasonably delayed in prosecuting its claim, (2) made a bad faith estimate of its damages that precluded settlement, or (3) not sustained any actual damages. *See, e. g., Alkmeon Naviera,* 633 F.2d at 797-98; *Mid-America Transportation Co. v. Rose Barge Line, Inc.,* 477 F.2d 914, 916 (8th Cir. 1973). If the court concludes that such circumstances are present, it has discretion to deny prejudgment interest. Discretion is limited to cases where exceptional circumstances exist because prejudgment interest in admiralty is compensatory, not punitive, in nature. Its purpose is to reimburse the claim-

ant for the loss of use of its investment or its funds from the time of such loss until judgment is entered. *See, e. g., Socony Mobil Oil Co. v. Texas Coastal & International, Inc.*, 559 F.2d 1008, 1014 (5th Cir. 1977); *Utility Service Corp. v. Hillman Transportation Co.*, 244 F.2d 121, 125 (3d Cir. 1957).

A.

In rejecting Villaneuva's request for prejudgment interest, the district court concluded that "there were exceptional circumstances in this case which prevented the prompt resolution of the claims." The court did not, however, state that this delay was attributable to Villaneuva. Instead, it stressed the complexity of the case and the necessity for extensive discovery. The court also noted that the QUEENY interests were not responsible for the delay.

Prejudgment interest can be denied only when delays in resolution of the case are directly attributable to the party claiming interest. Thus, delays resulting from the size and complexity of a proceeding cannot be charged to the claimant. *See Socony Mobil*, 559 F.2d at 1014. The limitation of liability proceedings filed in the district court encompassed 112 claims and involved numerous parties. As the district court apparently recognized, this was responsible for much of the delay in bringing the proceedings to trial. The court expressly found, moreover, that responsibility for the delays could not be placed upon any one party. The court emphasized that the QUEENY interests were not at fault, but this determination is not compelling because the purpose of prejudgment interest is to compensate the damaged party, not to punish the party against whom interest is awarded. *See Socony Mobil*, 559 F.2d at 1014.

The district court also noted that the QUEENY interests contended that Villaneuva had made a bad faith

estimate of its damages. The QUEENY interests argued that Villaneuva's estimates, which ranged as high as $35 million, were greatly exaggerated and precluded any possibility of a settlement of Villaneuva's claims. The court never expressly passed upon the validity of this contention, although it did emphasize in another section of its opinion that the market value of the CORINTHOS set by Villaneuva's expert witness was "grossly overstated." We think it appropriate to construe the district court's conclusion that "there were exceptional circumstances in this case which prevented a prompt resolution of the claims" to include a determination that Villaneuva made a bad faith estimate of its damages that precluded settlement.

Villaneuva notes that its initial claim of $35 million was filed only three days after the collision occurred and was based upon an estimate of all potential personal injury and death claims that could be filed against it as well as the total loss of the CORINTHOS and its cargo. Villaneuva also emphasizes that discovery lasted over three years, and that it reduced its claim to $14.74 million when discovery was completed. By the time of the damage trial, Villaneuva's claim was $12.59 million. In addition, Villaneuva states that its final settlement offer was $7 million. The QUEENY interests maintain that these figures are not part of the record, but they do not dispute their accuracy. In fact, they argue that the figures support their contention that Villaneuva was in bad faith.

Even assuming the accuracy of the figures cited by Villaneuva, we do not believe that they demonstrate that the district court's decision was erroneous. Given the $2.73 million market value of the CORINTHOS upheld earlier in this opinion, we cannot say that the court was incorrect in concluding that the nearly $8 million valuation placed upon the ship by Villaneuva was grossly overstated. We also note that Villaneuva's final settlement of-

fer was more than double the district court's damage award, and it is undisputed that the QUEENY interests' offered to settle for $3 million, only $74,000 less than the damage award. Even if Villaneuva's original claim of $35 million is not considered, the evidence supports a conclusion that Villaneuva's pretrial estimates of its damages were so unreasonable as to amount to bad faith and to preclude settlement. As a result, the district court's determination that exceptional circumstances existed must be upheld. Because such circumstances were present, the court had discretion to deny prejudgment interest. Although the issue is not free from doubt, we cannot say that the court abused its discretion in denying Villaneuva's claim for prejudgment interest on the total damage award.

Villaneuva also contends that it is entitled as a matter of law to interest on the value of the CORINTHOS "as a separate and distinct item of damages in lieu of lost profits." Villaneuva maintains that unlike prejudgment interest on the total damage award, interest on the value of a vessel must be granted as a matter of right in a total loss case. In addition, because such interest is purportedly a separate item of damages, Villaneuva asks this court to include interest on the value of the CORINTHOS as part of the total damage award if the district court's denial of prejudgment interest on that award is reversed.[1] Villaneuva cites a number of 19th century English admiralty

1. Villaneuva calculates its claim as follows:

(a) value of the CORINTHOS	$ 7,981,400.00
(b) interest on value of the CORINTHOS	$ 4,728,181.36
(c) other damages	$ 295,547.27
Total damages	$13,005,128.63
(d) interest on damage award	$ 7,704,238.20
Total damages with interest	$20,709,366.83

cases to support its contention, but it admits that since 1874 courts in the United States have not distinguished between prejudgment interest on the value of a vessel as a separate part of damages and prejudgment interest on the total damage award. Villaneuva also concedes that modern cases have applied the exceptional circumstances standard to all prejudgment interest claims, regardless of whether they relate to interest on the value of the vessel or to other items of damages. We see no reason to depart from these cases. Thus, we hold that Villaneuva is not entitled to interest on the value of the CORINTHOS as a "separate and distinct" item of damages.

B.

The district court stated that delays in bringing the case to trial justified its rejection of BP/Sohio's claim for prejudgment interest. The court noted that none of the parties acted with "haste," and it emphasized that there was a "constant barrage of requests by both sides for continuances and delays." The court concluded that responsibility for these delays could not be placed upon any one party. Nevertheless, it charged BP/Sohio with the delays because "the initiative is always with the plaintiff. It should want to proceed to trial in haste to recover its damages. Any delays should work to its disadvantage."

As noted earlier, delays in the resolution of a proceeding constitute exceptional circumstances only if they are directly attributable to the party claiming prejudgment interest. The district court, however, apparently charged BP/Sohio with delays attributable to all parties and to the complex nature of the proceedings solely because of BP/Sohio's status as a plaintiff. Our attention is not directed to any evidence indicating that BP/Sohio was directly responsible for these delays or that it did not diligently prosecute its damage claims. Thus, to the ex-

tent the district court concluded that exceptional circumstances were present because of delay in resolving BP/Sohio's claims, its conclusion finds no support in the record.

The district court also appears to have based its decision to deny prejudgment interest on a belief that BP/Sohio's estimate of its damages was in bad faith. The court noted that although BP/Sohio's original claim was $25.99 million, the parties stipulated that the amount of provable damages sustained by BP/Sohio was only $16.19 million. The court then concluded that the "wide variance" between BP/Sohio's original estimate and the stipulated damages justified the denial of prejudgment interest. The court did not expressly state that BP/Sohio's original estimate was made in bad faith. Although the district court's opinion is not entirely clear, we will construe its language to constitute a determination that BP/Sohio made a bad faith estimate of its damages that precluded settlement.

The QUEENY interests contend that the record fully supports the district court's decision to deny prejudgment interest on the ground that BP/Sohio was in bad faith. However, other than the "wide variance" between BP/Sohio's original estimate and the stipulated damages, there is no evidence that could indicate that BP/Sohio's statement of its claims contained spurious items or was unreasonably high under the circumstances. *Cf. Patterson Terminals, Inc. v. S.S. Johannes Frans,* 209 F.Supp. 705 (E.D.Pa. 1962) (denying prejudgment interest because claim included damages "obviously" not caused by other party). We find that this variance is not sufficient by itself to support a conclusion that BP/Sohio acted in bad faith. BP/Sohio's *original* estimate was only 60.5% greater than the settlement amount, whereas Villaneuva's *postdiscovery* statement of its claim was almost 380%

greater than the damages awarded to it.[2] Furthermore, we note that the $16.19 million awarded to BP/Sohio was the result of a settlement between the parties, not a decision by the court that BP/Sohio had suffered only that amount of damages. A settlement is by its very nature a compromise, and BP/Sohio asserts that during the course of the extensive bargaining process preceding the settlement it withdrew certain items of damages in an effort to reach an agreement.

The record also does not support a conclusion that BP/Sohio's original estimate precluded an earlier settlement of the case. Prior to the district court's denial of the QUEENY interests' limitation of liability petition, the QUEENY interests apparently were unwilling to settle for an amount above a specified percentage of the limitation fund even though they conceded that BP/Sohio had sustained at least $10 million in damages.[3] Within two months after the district court's decision on the liability issues, the parties stipulated that BP/Sohio had sustained $16.19 million in provable damages. We recite these facts

2. BP/Sohio maintains that it offered to settle its claim for $18.75 million two years before the damage trial, an amount only 16% above the eventual settlement figure. The QUEENY interests note, however, that this settlement offer is not part of the record. Therefore, we will consider only BP/Sohio's original estimate in determining whether the district court could properly conclude that BP/Sohio's statement of its claim was in bad faith.

3. BP/Sohio states that the QUEENY interests never offered to settle for more than $3 million before the district court's liability decision. The QUEENY interests note that their pretrial settlement offer is not part of the record, but they do not dispute the accuracy of the $3 million figure. In addition, they did not challenge at trial BP/Sohio's statement that the QUEENY interests' settlement offer was "in the order of twenty-five percent" of the damages that the QUEENY interests admitted BP/Sohio had incurred.

not to show that the QUEENY interests were at fault, but to demonstrate that there was little or no chance of reaching a settlement on BP/Sohio's claims before the court issued its decision on the limitation of liability petitions. As a result, BP/Sohio's original estimate of its damages cannot be said to have precluded an earlier settlement of its claims. Given the compensatory purpose of prejudgment interest, we do not believe that the district court properly could conclude that BP/Sohio's original estimate of its damages constituted an exceptional circumstance that deprived it of the right to such interest. Therefore, we will reverse the district court's denial of BP/Sohio's claim for prejudgment interest.[4]

The QUEENY interests maintain that if prejudgment interest is awarded, this court should remand for further findings. The QUEENY interests argue that numerous factual issues remain unresolved, including the rate of interest and when interest should be calculated from for each item of damages. BP/Sohio asserts that unrebutted evidence on the record demonstrates that its actual cost of obtaining funds during the period between the collision and a date just prior to the judgment was 10.5%. In addition, it maintains that the record is complete with regard to the date from which prejudgment interest should run.

Undisputed evidence in the record indicates that BP/Sohio's rate of return on borrowed and invested capi-

4. BP/Sohio also argues that the district court erred in failing to include in the damage award BP/Sohio's out-of-pocket costs for funds borrowed to repair damages to its facilities and to meet excess business expenses resulting from the collision. BP/Sohio raises this issue as an alternative argument; it asks for either prejudgment interest or consequential damages for its actual borrowing costs. Because we have determined that the district court erred in denying BP/Sohio's claim for prejudgment interest, we need not decide whether BP/Sohio's out-of-pocket borrowing costs should have been included in the damage award.

tal during the period after it sustained its damages was 10.5%. Because prejudgment interest is intended to compensate the claimant for the loss of use of its investment and its funds, we believe that 10.5% is an appropriate rate of interest in this case. We note, however, that although BP/Sohio stated in the district court that it had sustained losses over a thirteen month period after the collision, it did not itemize the date of each loss in the evidence it presented. Such itemization is not necessary to establish the rate of prejudgment interest, which is a matter within the discretion of the court. It is essential, however, to a determination of when prejudgment interest commences because such interest is allowable only from the date of the loss of use of the claimant's investment or funds. *See Mid-America Transportation Co. v. Rose Barge Line, Inc.*, 477 F.2d 914, 916 (8th Cir. 1973) (prejudgment interest computed from time expenditures actually made); *Crain Bros. v. Duquesne Slag Products Co.*, 273 F.2d 948, 953 (3d Cir. 1959) (prejudgment interest not legally allowable until charges actually paid). On the record before us we cannot determine when BP/Sohio incurred specific items of loss. We therefore will remand for further proceedings on the issue of when prejudgment interest begins to run on individual items of BP/Sohio's damages.

IV.

BP/Sohio argues that the district court erred by awarding postjudgment interest at the legal rate of interest in Pennsylvania. This court held in *Gardner v. The Calvert*, 253 F.2d 395 (3d Cir.), *cert. denied sub nom. Sound Steamship Lines, Inc. v. Gardner*, 356 U.S. 960, 78 S.Ct. 997, 2 L.Ed.2d 1067 (1958), that 28 U.S.C. § 1961 (1976), which sets postjudgment interest in civil cases at the legal rate of interest in the state in which the

district court sits, does not apply to admiralty cases. The *Gardner* court noted that the rate of postjudgment interest in admiralty is "a matter within the sound discretion of the district court." 253 F.2d at 403. BP/Sohio argues that the district court erred if it believed that it was compelled by section 1961 to award postjudgment interest at the legal rate of interest in Pennsylvania. In addition, BP/Sohio contends that even if the court exercised its discretion it did so in an improper manner because it gave no reason for awarding interest at a rate more than 4% below BP/Sohio's continuing loss.

The district court stated only that "[p]ostjudgment interest shall follow the judgment at the legal rate of interest allowable in the Commonwealth of Pennsylvania." We cannot be certain from this statement that the court was aware that under *Gardner* it was not bound by section 1961 to apply the Pennsylvania legal rate of interest. Therefore, because we have previously decided that this case must be remanded for further proceedings, we will reverse the district court's postjudgment interest award to allow it on remand to reconsider its decision in light of this opinion.

V.

We conclude that the district court's finding that the market value of the CORINTHOS at the time of its destruction was $2.73 million was not clearly erroneous. We also uphold the court's denial of Villaneuva's prejudgment interest claim. We find, however, that the district court erred when it denied BP/Sohio's prejudgment interest claim. BP/Sohio is entitled to prejudgment interest at the rate of 10.5%, but the case will be remanded for a determination of the time from which such interest should run. Finally, we remand to enable the district court to reconsider its decision awarding postjudgment interest at the legal rate of interest in Pennsylvania.

VI.

The order of the district court will be reversed to the extent that it denied BP/Sohio's claim for prejudgment interest and awarded postjudgment interest at the legal rate of interest in Pennsylvania, and the case will be remanded for further proceedings consistent with this opinion. The order of the district court will be affirmed in all other respects.

Memorandum Opinion of the United States District Court for the Eastern District of Pennsylvania, in the Matter of The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability, Civil Action No. 75-364; in the Matter of The Complaint of Villaneuva Compania Naviera, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration from and Limitation of Liability, Civil Action No. 75-2110, Filed July 18, 1980.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action Nos. 75-364, 75-2110

In the Matter of the Complaint of BANKERS TRUST COMPANY, as Owner-Trustee and Monsanto Company, as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS EDGAR M. QUEENY, for Exoneration from and Limitation of Liability.

In the Matter of the Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability.

July 17, 1980.
As Amended July 21, 1980.

MEMORANDUM OPINION

WEINER, *District Judge.*

Before the Court for determination is the amount of damages to be awarded BP/Sohio and the Corinthos interests.* The trial of the damage issues was bifurcated from the trial of the liability issues. The Court issued its opinion determining the issues of liability on February 19, 1980, 503 F.Supp. 337, when it was concluded that the

* Sixty cases which included 112 personal injury, property damage and other sundry matters. This entire matter was transferred to this court in December, 1977. All the personal injury cases have been resolved, the majority of the property damage cases have been resolved and the balance are being processed.

Queeny interests were not entitled to limit their liability for the damages suffered by various parties as a result of the collision between the S.S. Edgar M. Queeny and the S.T. Corinthos on the Delaware River, at Marcus Hook, Pennsylvania during the early morning hours of January 31, 1975.

Trial of the damage issues took place on April 21, 1980. At that trial, BP/Sohio and the Queeny interests submitted to the Court a document entitled "Offer of Proof of Claim in Lieu of Trial". That document contained a stipulation authorizing the Court to enter judgment at the conclusion of the damages trial in BP/Sohio's favor against the Queeny interests.[1] Those parties concluded that the total of BP/Sohio's provable damages is $16,188,531.00. The stipulation and offer of proof did not address the issues of prejudgment interest, the interest rate as to either prejudgment or post-judgment interest, or the award of costs.

As between the Corinthos interests and the Queeny interests, no stipulation has been entered into regarding the amount of damages to be awarded. Thus, as to the damage claims of the Corinthos interests, the Queeny interests have identified four issues to be resolved. Briefly stated, these issues are: (1) What value is to be placed on the Corinthos; (2) Is Corinthos entitled to recover sums paid pursuant to Greek Law on various personal injury claims; (3) Is Corinthos entitled to prejudgment interest as to the damages awarded as compensation for the value of the Corinthos; and (4) Is Corinthos entitled to prejudgment interest as to the personal injury claims paid pursuant to Greek Law?

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1. The stipulation is based upon the mutual recommendation of counsel. It reserved for the principal parties the right to reject the stipulation within 90 days.

I

BP/SOHIO-PREJUDGMENT INTEREST

Turning first to the question of whether BP/Sohio is entitled to prejudgment interest, the Queeny interests contend that because BP/Sohio grossly overstated its original claim by demanding $25,986,936.00, the parties could not bring a quick resolution to the case by entering into meaningful settlement negotiations. The Queeny interests argue that BP/Sohio's negotiation actions amounted to a bad faith representation of their damages, and therefore, prejudgment interest is not recoverable.

Neither the Queeny nor the BP/Sohio, nor the Corinthos interests acted with haste in this matter. There was a constant barrage of requests by both sides for continuances and delays.

In BP/Sohio's case, as in the Corinthos' case, it was uncertain who would bear legal responsibility for the damages suffered. In a situation where liability is contested, the give and take which normally occurs during settlement negotiations often produces demand and offer figures which are at opposite ends of the spectrum. Unless a settlement occurs, the Court cannot expect the damaged party to undervalue the extent of its damages nor the responsible party to overvalue its offer. Both parties are expected to negotiate in good faith.

Regarding the award of prejudgment interest in admiralty cases, no statutory provision exists. It is therefore left to the sound discretion of the Court to determine whether prejudgment interest should be awarded. *Dow Chemical Co. v. M/V Gulf Seas*, 593 F.2d 613 (5th Cir. 1979); *Mid-America Transportation Company, Inc. v. Rose Barge Line, Inc.*, 477 F.2d 914 (8th Cir. 1973); *Gardner v. The Calvert*, 253 F.2d 395, *cert. denied*, 356 U.S. 960, 78 S.Ct. 997, 2 L.Ed.2d 1067 (1958); *Maryland Shipbuild-*

ing & Drydock Co. v. Patapsco Scrap Corp., 169 F.Supp. 605 (D.Md.1959). Generally, in an admiralty case, prejudgment interest should be granted unless there are exceptional or peculiar circumstances. *Socony Mobil Oil Co. v. Texas Coastal and International*, 559 F.2d 1008 (5th Cir. 1977); *Mid-America Transportation Company, Inc. v. Rose Barge Line, Inc., supra; Sea-Land Services, Inc. v. Eagle Terminal Tankers*, 443 F.Supp. 532 (W.D.Wash.1977).

There are three basic factors which can result in the disall wance of prejudgment interest. The first factor is unreasonable or unexplained delay in the prosecution of the case which results in prejudice to the opposing side. *O'Donnel Trans. Co., Inc. v. City of New York*, 215 F.2d 92, 95 (2nd Cir. 1954); *The Russel No. 3*, 82 F.2d 260, 263 (2nd Cir. 1936). The second factor is a bad faith estimate of damages. *Patterson Terminals, Inc. v. S.S. Johannes Frans*, 209 F.Supp. 705, 711 (E.D.Pa.1962); *Maryland Shipbuilding & Drydock Company v. Patapsco Scrap Corporation, supra; Detroit & Cleveland Navigation Company v. The Steamer Elbert H. Gary*, 161 F.Supp. 570, 578 (E.D.Mich., S.D.1958). The third factor is where there are no actual damages incurred.

There is no question but that BP/Sohio suffered damage. In determining whether to award prejudgment interest we shall therefore examine and review the first two factors referred to above.

An examination of the records reveals that a finger cannot be pointed at any one party, accusing it alone of unreasonable delay. There have been many delays occasioned by the acts of all parties at one time or another. In any case, the initiative is always with the plaintiff. It should want to proceed to trial in haste to recover its damages. Any delays should work to its disadvantage. A plaintiff does not have the right to drag its cause because it expects to get prejudgment interest.

The factor concerning a bad faith estimate of damages is our next concern. The original claim of BP/Sohio was $25,986,936.00. At the trial of the damage issues on April 21, 1980, BP/Sohio and Queeny filed a stipulation with the Court authorizing the entry of judgment in BP/Sohio's favor in the sum of $16,188,531.00, representing the provable damages.

Reviewing all of the circumstances of this case, with the wide variance between the estimate of damage and the provable damage, which provable damage was not resolved until more than five years after the accident, and the delays in bringing this case to trial, the Court is of the opinion that there should be no allowance of prejudgment interest.

II

VALUE OF THE CORINTHOS

The measure of damages, when there is a total loss of a vessel, is its market value at the time of the loss. The Supreme Court discussed the measure of damages in the case of a total loss of a vessel in *Standard Oil Company of New Jersey v. Southern Pacific Company*, 268 U.S. 146, 45 S.Ct. 465, 69 L.Ed. 890 (1925). The Court stated:

> "It is fundamental in the law of damages that the injured party is entitled to compensation for loss sustained. Where property is destroyed by wrongful act, the owner is entitled to its money equivalent, and thereby to be put in as good position pecuniarily as if his property had not been destroyed. In case of total loss of a vessel, the measure of damages is its market value, if it has a market value, at the time of destruction. *The Baltimore*, 8 Wall. 377, 385, 75 U.S. 377, 19 L.Ed. 463. Where there is no market value such as is established by contemporaneous sales

of like property in the way of ordinary business, as in the case of merchandise bought and sold in the market, other evidence is resorted to. The value of the vessel lost properly may be taken to be the sum which, considering all the circumstances, probably could have been obtained for her on the date of the collision; that is, the sum that in all probability would result from fair negotiations between an owner willing to sell and a purchaser desiring to buy. *Brooks-Scanlon Corporation v. United States,* 265 U.S. 106, 123, 44 S.Ct. 471, 474, 68 L.Ed. 934. And by numerous decisions of this Court it is firmly established that the cost of reproduction as of the date of valuation constitutes evidence properly to be considered in the ascertainment of value. *Southwestern Bell Telephone Co. v. Public Service Commission,* 262 U.S. 276, 287, 43 S.Ct. 544, 546, 67 L.Ed. 981, and cases cited; *Bluefield Co. v. Public Service Commission,* 262 U.S. 679, 689, 43 S.Ct. 675, 677, 67 L.Ed. 1176; *Georgia Ry. & Power Co. v. Railroad Commission,* 262 U.S. 625, 629, 43 S.Ct. 680, 67 L.Ed. 1144; *Brooks-Scanlon Corporation v. United States, supra,* 265 U.S. at 125, 44 S.Ct. at 475; *Ohio Utilities Company v. Public Utilities Commission,* 267 U.S. 359, 45 S.Ct. 259, 69 L.Ed. 656. The same rule is applied in England. *In re Mersey Docks and Admiralty Commissioners* [1920], 3 K.B. 223; *Toronto City Corporation v. Toronto Railway Corporation,* [1925] A.C. 177, 191. It is to be borne in mind that value is the thing to be found and that neither cost of reproduction new, nor that less depreciation, is the measure or sole guide. The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. *Minne-*

sota Rate Cases, 230 U.S. 352, 434, 33 S.Ct. 729, 754, 57 L.Ed. 1511.

The Corinthos was a steam turbine propelled tanker with a horsepower of 17,000, built in 1963 at a cost of $5,194,000.00.[2] It had gross tons of 30,705 net tons of 20,935, and its deadweight tonnage was 56,882. It was 723.7 feet in length, and 106 feet in breadth. Its depth was 52 feet, 35 inches. The Corinthos had a speed of 16¼ knots. It was a single deckhouse tanker. The deckhouse was located aft of all cargo tanks and contained all officer and crew accommodations. In addition, this enclosure also housed all propulsion machinery, and was topped by the wheelhouse and other navigating spaces. The cargo space on the Corinthos was separated into six tanks numbered fore to aft. The forwardmost tank was divided into port and starboard units, and the remaining five tanks were further divided into port, starboard and center spaces for a total of seventeen cargo tanks. The aft cargo pump room was located aft of the No. 6 center cargo tank, and just forward of the deckhouse.

Queeny called as its expert witness as to value a ship broker, Robert J. Pierot of Jacques Pierot, Jr. and Sons, Inc., ship brokers since 1894. He testified that he has been with the firm since 1952 as a broker and valuator of ships, and that the firm is involved in transactions for sale and purchase of over one hundred vessels per year. Mr. Pierot testified that the tanker market in late January, 1975, was "disastrous", that it had dropped tremendously. The Corinthos was a steam turbine ship. The witness pointed out that a steam turbine propelled ship consumes more fuel than a diesel propelled ship, and that with rapidly escalating fuel cost at the time of this col-

2. The parties stipulated that the cost of construction was $5,194,000.00.

lision, steam propelled vessels were less economic, and that fact was reflected in their market value.

Pierot defined market value as "what a willing buyer and a willing seller would sell it". He testified that the factors which determine market value include the sale of similar vessels, availability of similar vessels for sale on the market, and his estimation of what a willing buyer would pay for a similar vessel. He testified from a document marked Q-69 that a similar vessel named the Golar Martita was sold on January 31, 1975, for $1,200,000.00. The Golar Martita was a steam turbine tanker built in 1958, and was 42,270 tons deadweight. It had a horsepower of 16,500, gross tons of 25,337, and net tons of 16,928. It was 710 feet in length, 92 feet, 6½ inches in breadth, had a depth of 48 feet, 7 inches, and had speed of about 16 knots. The witness stated that although the Golar Martita was built five years before the Corinthos was built, the difference in age would not have been a substantial factor in the valuation of the vessels toward the end of January, 1975. The witness placed very little value on the charter under which the Corinthos was operating. He said that a charter may have an enhancing value of the price of a vessel and it might have a depressing value, depending on the particular form of the charter.

Pierot placed a market value on the Corinthos at the time of collision on January 31, 1975, at $2,500,000.00.

Corinthos relied on the testimony of Eric Bates and Edward F. Ganly, vessel appraisers. Mr. Ganly testified that he was a 1936 graduate of Webb Institute of Naval Architecture with a bachelor's degree in Naval Architecture and Marine Engineering. He was employed as a marine surveyor from 1937 to 1961, at which time he began his own business. He was active in the business until he sold it in 1978. He testified that beginning in

1940 he calculated values of many different types of floating equipment, and that through the years he has appraised over a thousand vessels. His testimony at the trial was an affirmance of the valuation placed upon the Corinthos by Eric Bates.

Mr. Bates is a chartered engineer. He was employed in the technical design department of a shipbuilder from 1935 to 1939. From 1940 to 1946 he was an engineer in the Royal Navy. He was employed by British Petroleum from 1946 to 1971. From 1971 to 1978 he was a marine surveyor with Ganly Briggs, Inc.

Mr. Bates' testimony was introduced at the trial by way of depositions taken on November 24, 1978 (Exhibit C 335A) and on January 13, 1978 (Exhibit C 335B). Mr. Bates testified that Ganly Briggs, Inc. were marine surveyors. While employed by them he conducted valuations of vessels as well as surveying.

Mr. Bates testified that in making a valuation of a vessel the important information to be obtained are the carrying capacity which is deadweight tonnage, the speed in knots, and the age of the vessel (Bates Deposition, p. 20, Exhibit 335A). He stated that he looked at sales of comparable vessels in making a valuation. Bates testified that after searching the records, he had found no comparable vessels of similar size, age and capacity to the Corinthos which had been sold at about the time of the Corinthos loss. The Corinthos interests argue that in the absence of comparable sales, there can be no market value of a vessel. They claim that under these circumstances we must refer to the other factors regarding the Corinthos, such as her age, capacity, speed, marine hull insurance, marine risk insurance, profitable charter operation, and reputation among major tank operators. Bates valued the Corinthos as of the date of loss at $7,981,400.00. In his valuation of the Corinthos Bates

relied upon the sale of a vessel by the name of Thorhild which was sold in November, 1974. The witness testified that the Thorhild had a deadweight of 52,500 tons and was sold for $7,600,000.00. By dividing the tonnage into the sales price, Mr. Bates arrived at a figure of $144.76 per deadweight ton. He stated that the Thorhild was 15¾ knots whereas the Corinthos was 16¼ knots. He placed a factor for the ½ knot difference at 1.025. Thus, he multiplied $144.76 by 1.025 and obtained a figure of $148.38 per deadweight ton in making his valuation of the Corinthos.

Mr. Bates testified that he used discounted cash flow for depreciation purposes, and in this valuation, he used 5%. He therefore took 5% of the Corinthos deadweight tonnage of 56,882 and came up with 54,120. He multiplied 54,120 by $148.40 (dollars per deadweight ton), giving him a gross valuation of $8,031,400. Still using the sale of the Thorhild as his basis for valuation of the Corinthos, Mr. Bates testified that the Thorhild had just come out of a four year survey and had in it $200,000.00 worth of work which the new owner would not have to spend himself. He went on to say that at the time he valued the Corinthos it was approximately one year after it had a major survey. He testified "One year in four is one quarter. One quarter of $200,000.00 is $50,000.00; and, therefore, I deducted $50,000.00 from the computation of dollars per deadweight times the deadweight of the Corinthos . . .". Thus, by deducting $50,000.00 from $8,031,400.00 Mr. Bates arrived at his valuation of the Corinthos of $7,981,400.00. We find that that market value is grossly overstated.

Mr. Bates failed to take into consideration that the Thorhild was a motor vessel, and there was testimony that there were very extensive favorable credit terms which was a factor in increasing the sales price of the vessel. An-

other Corinthos witness was George Bisbas, director of N.J. Goulandris (Agencies), Ltd., which was the agent for Villaneuva Compania Naviera, S.A., owner of the Corinthos. His testimony was that the Corinthos had a charter to a first rate oil company, Amoco, which charter had twenty-eight months to run from the date of the loss of the Corinthos. He computed the net profit under the charter as $204,975.00 per month which when multiplied by the twenty-eight months remaining under the charter, totals $5,740,000.00 as the net profit expected in the operation of the Corinthos under the Amoco charter. The Corinthos interests, however, agree that they are not claiming loss of future earnings under the charter. They claim that the vessel's value was substantially enhanced by the charter earnings.

The only charter introduced into evidence is a charter between Marceloso Compania Naviera and Amoco Trading International, Ltd. The charter is for a vessel named the Antipolis. The charter provided that other vessels named in the charter may be substituted for the Antipolis. At the time of the collision, the Corinthos was a substituted vessel under this charter.

We do not give much weight to the value of this charter in determining the value of the Corinthos. There has been no evidence as to the length of time the Corinthos operated under the charter. The Corinthos owner was not a party to the charter. The Corinthos could have been substituted for by another vessel. We find that, under those circumstances, this charter could not enhance the value of the Corinthos. If the Corinthos had been for sale, a prospective purchaser would certainly want to know how he could be assured of the anticipated profits to be gained under this charter if he were to place any value upon it in determining the market value of the vessel. This court in having to determine the market value of the Cor-

inthos stands in the shoes of a prospective purchaser of the vessel.

What we must do is arrive at a sum which could have probably been obtained for the Corinthos had she been sold just prior to the collision on January 31, 1975. It is the sum a willing purchaser would have paid for the vessel in sound condition on that date. Such a sales price can never be exact since such a sale never took place. We must approximate the market value of the vessel taking all other factors into consideration.

We shall examine the sales of the vessels, Golar Martita and Thorhild, and their comparison with the Corinthos.

We reject the comparison by which Mr. Bates determined the market value of the Corinthos. His use of the sale of the Thorhild for obtaining his calculations for valuation of the Corinthos was not proper. The Corinthos was "a steam turbine propelled tanker whereas the Thorhild was a motor vessel. With the rapidly declining tanker market in late January 1975, and the rapidly escalating fuel cost at that time, the market value of steam turbine vessels was much lower than motor vessels since steam propelled vessels were less economic because they consumed more fuel than diesel propelled vessels. Another reason the sales price of the Thorhild is not controlling in valuing the Corinthos is that the Thorhild was sold in November 1974, whereas the market value of the Corinthos must be determined as of January 31, 1975. Both Mr. Pierot and Mr. Bates agreed that the market for ships in the January 1975 was a very poor market. (Bates Deposition, p. 63, Exhibit C 335A) (Pierot Testimony, N.T. 1619).

In contrast, the comparison used by Mr. Pierot appears more sound. The Golar Martita was sold on January 31, 1975, the exact date of the Corinthos loss. They were both steam turbine propelled vessels. The Corinthos had a speed of 16¼ knots, and the Golar Martita had a

speed of 16 knots. The vessels had similar horsepower, the Corinthos 17,000, the Golar Martita 16,500. The deadweight tonnage of the Corinthos was 56,882, the Golar Martita 42,270. The Corinthos length was 723.7 feet, the Golar Martita 710 feet. Their breadth and depth were also similar, the Corinthos breadth being 106 feet, the Golar Martita 92 feet, 6½ inches; Corinthos depth 52 feet, 35 inches, the Golar Martita 48 feet, 7 inches. The one very distinguishing feature between the two vessels was age. The Corinthos was built in 1963, the Golar Martita in 1958.

If we were to use the same method for calculations which Mr. Bates used, but substituted the Golar Martita for the Thorhild, we would divide the deadweight tonnage of 42,270 of the Golar Martita into its sales price of $1,200,000.00 and obtain $28.39 for the per deadweight ton. Multiplying the per deadweight ton figure of $28.39 by the deadweight tonnage (after deducting the 5% depreciation) of 54,120 we get the result of $1,614,879.98 as the market value of the Corinthos. We have not deducted any variable for the yearly survey, since no information of any survey expenses were given concerning the Golar Martita. Obviously the market value for the Corinthos was greater than $1,614,879.98. Even Mr. Pierot, called by the Queeny interests as their expert witness, valued the Corinthos at $2,500,000.00. We shall therefore examine other factors which might increase the value of the Corinthos.

In arriving at the market value of the Corinthos we have examined its deadweight tonnage as compared to the other vessels which were used for comparison by the experts who testified in this case. It is important to consider the deadweight tonnage because as Mr. Bates testified, "Combined with the speed, it is the earning power of the vessel." (Bates Deposition, p. 31, Exhibit C 335A). The Golar Martita had deadweight tonnage of 42,270,

the Thorhild 52,500, the Corinthos 56,882. The Golar Martita had speed of 16 knots, the Thorhild 15¾ knots, and the Corinthos 16¼ knots. Thus the Corinthos was the fastest and had the largest carrying capacity or deadweight tonnage of the three vessels. These factors raise the value of the Corinthos. Also, the Golar Martita was five years older than the Corinthos. That also enhances the value of the Corinthos over that of the Golar Martita.

If we were to use the previously discussed value of $1,614,879.98 for the Corinthos as our base figure, we will add the factors which we feel have enhanced that value. The speed of the Corinthos was 16¼ knots compared to 16 knots for the Golar Martita. That quarter knot has a factor of 1.0125. Multiplying 1.0125 by the value of $1,614,879.98 gives us a resulting value of $1,635,065.98. We have determined that the deadweight tonnage or carrying capacity of the Corinthos was 56,882 compared to 42,270 for the Golar Martita. The Corinthos has therefore 33⅓ more carrying capacity. Thus by dividing $1,635,065.98 by three we have a resulting figure of $545,021.99, which when added to $1,635,065.98 gives us a Corinthos value of $2,180,087.97. We now consider the age of the vessel. The Golar Martita was five years older than the Corinthos. A vessel is usually thought to have a life span of twenty years. If we therefore take 25% (5 years at 5% per year) of $2,180,087.97 we have a result of $545,021.99, which when added to $2,180,087.97 gives us a market value of the Corinthos of $2,725,109.96.

III

CORINTHOS CLAIMS FOR REIMBURSEMENT OF PAYMENTS MADE BY IT

Queeny claims that at the trial, Corinthos failed to prove Greek law. The brief of counsel for the owner of

the Corinthos has attached as Exhibit "E" a letter addressed to Queeny's counsel dated April 29, 1980, which letter purports to be an agreement between the parties that live testimony of a Greek lawyer would not be necessary if a satisfactory text of the Greek law was produced.[3] Also attached to the brief is a certification by Constantine A. T. Lascaratos of G and N L Daniolos with an explanation of the applicable Greek law.[4]

The Court has examined the applicable sections of the Greek law and compared them to the payments made by Corinthos. For the death claims, the law provides for compensation of five years wages. Although the Court has not been provided with the salary of each decedent, the payments range from $6,146.11 to $22,518.87. The Court can take judicial notice that a seaman in 1975 earned in excess of $4,500.00 per year, so the payments did not exceed the Greek law provision of five years wages for compensation of a death claim. The settlements and payments by Corinthos appear proper on their face and shall be allowed in the amount of $240,904.76.

The same reasoning holds forth for the survivor claims. The Greek law provides in the case of total permanent disability for compensation containing six years wages. The settlement payments for survivors ranged from $1,002.03 to $5,891.09. Those payments did not exceed the provisions contained in the Greek law, and appear proper on their face and shall be allowed in the amount of $40,119.16.

The payments by Corinthos for undertakers in the sum of $7,032.68, for transportation of remains, in the sum of $4,008.24, for repatriation, food, lodging, etc. in the

3. A copy of the letter of April 29, 1980, is attached hereto as Appendix A.

4. See Appendix B attached hereto.

sum of $27,858.40, and for telephone charges in the sum of $27.35 all appear proper and shall be allowed.

The Corinthos asks for reimbursement for a pollution fine paid to the U. S. Coast Guard in the sum of $2,500.00. Since Queeny admits that this claim has been proven, we shall allow it.

Queeny also admits that the Corinthos claim for extraordinary agency fees and expenses paid to B. H. Sobelman, in the amount of $12,000.00 is correct, and we shall allow that claim.

Corinthos asks also for reimbursement of extraordinary agency fees and expenses paid to Lamorte, Burns & Co., Inc. in the total amount of $25,401.60. An examination of the record fails to disclose the proof by Corinthos of payment to Lamorte, Burns & Co., Inc. and we shall therefore disallow that claim.

IV

CORINTHOS CLAIMS—PREJUDGMENT INTEREST

We now turn our attention to the question of whether Corinthos is entitled to prejudgment interest.

We have already discussed the law as to prejudgment interest in part I of this Opinion in regard to BP/Sohio.

Queeny contends Corinthos is not entitled to prejudgment interest because it (Corinthos) caused unreasonable delay in the prosecution of the case, which caused prejudice to the Queeny interests, and further that Corinthos made a bad faith estimate of its damages.

We shall first examine the claim by Queeny that Corinthos made a bad faith estimate of damages. Queeny claims that Corinthos at various times during the litigation maintained that their damages ran from $12,000,000.00 to $35,000,000.00; whereas, they now value the

vessel at $7,981,400.00. Queeny contends that the exaggerated claim made meaningful resolution of the litigation impossible. Corinthos on the other hand claims that Queeny never made any realistic offers above $3,000,000.00.

In connection with their other contention that Corinthos caused unreasonable delay in the prosecution of the case, Queeny states that it took Corinthos five years after the commencement of this action to furnish it with their claim for the death, personal injury and related items of expense.

The Court recognizes the immense scope and complexity of this litigation. The parties had to conduct intensive discovery before settlement negotiations could be conducted. There were voluminous documents which had to be reviewed.

The Court cannot place responsibility upon the Queeny interest for delaying any settlement in this case. We do not feel that prejudgment interest should be awarded to Corinthos because there were exceptional circumstances in this case which prevented a prompt resolution of the claims.

POST JUDGMENT INTEREST

Post judgment interest shall follow the judgment at the legal rate of interest allowable in the Commonwealth of Pennsylvania.

APPENDIX A

EXHIBIT E

April 29, 1980

James F. Young, Esq.
Krusen, Evans & Bryne
Public Ledger Building
Philadelphia, PA 19106

CORINTHOS/QUEENY
Our File: 8411-001

Dear Jim:

We confirm your agreement at the Bisbas deposition on Friday afternoon, April 18, that you would not insist that we prove Greek law at the trial by offering the live testimony of a Greek lawyer if we could produce a satisfactory text of the Greek law which would save court time and expense. On that date we offered to commit a Greek lawyer to appear, if necessary.

It was also agreed that you would not take the position at the trial that we had failed to prove Greek law if we did not offer at the hearing proof of Greek law.

At the trial on Monday, April 21, the Court specifically allowed us to produce a certification of Greek law in order to avoid the necessity of bringing in a Greek lawyer to prove the text as to the rights of injured and deceased seamen.

We have now received the text of the relevant sections of Greek law together with the lawyer's certification

thereof, copy of which is enclosed in accordance with the Court's instructions.

Very truly yours,
Richard W. Palmer

RWP/ns

cc: Hon. Charles R. Weiner
Benjamin F. Stahl, Jr., Esq.

P.S. We confirm that your motion to strike certain parts of the video deposition testimony of Mr. George P. Bisbas was received at our office Saturday morning, April 26, 1980 and was not hand delivered as it could have been since you were dispensing with the five days notice prescribed to permit us to file a response. Monday morning, April 28, 1980, Judge Weiner declined to allow us the usual five days to file a response but gave us permission to answer your motion in our Main Brief which at the same time he ordered filed by 0930 on Wednesday, April 30, 1980. We had been proceeding on the understanding reached with all counsel at the hearing on April 21 that Main Briefs were to be filed within one week after receipt of the transcript of the hearing on April 21, 1980. We are complying with the Judge's instructions given yesterday.

R.W.P.

APPENDIX B

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PALMBEE PHA

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MSSG 4/116

ATTN.: VERNON C. MILLER, ESQ.,

RE: "CORINTHOS"-"QUEENY"

PLS NOTE FOLLOWING SECTIONS (TRANSLATION INTO ENGLISH OURS) OF GREEK LAW GOVERN FOLLOWING ITEMS:

1. *LOSS OF PERSONAL EFFECTS*

   LAW NUMBER 3316 OF 1953 RE: RATIFICATION OF THE CODE OF PRIVATE MARITIME LAW ARTICLE 63 THEREOF PROVIDES:

   "THE SEAMAN IS ENTITLED TO FAIR COMPENSATION FOR THE LOSS DUE TO SHIPWRECK, FIRE OR SIMILAR EVENT, OF HIS EFFECTS OF PERSONAL OR PROFESSIONAL USE".

   IN PRACTICE SHIPOWNER PAYS A LUMPSUM TO OFFICERS AND ANOTHER TO CREW. IN OUR OPINION THE AMOUNTS PAID IN THIS CASE WERE CONSTITUTING A "FAIR" COMPENSATION.

2. *COMPENSATION FOR INJURIES TO INJURED SEAMEN AND TO NEXT OF KIN IN CASE OF FATAL INJURIES.*

ARTICLE 66 SECTION B OF THE CODE OF PRIVATE MARITIME LAW PROVIDES:

"THE ABOVE PROVISIONS APPLY ALSO ON ACCIDENTS DUE TO A VIOLENT EVENT AND IF THE SEAMAN SUSTAINED BECAUSE OF THE (ACCIDENTS PARENTHESIS OUR) DISABILITY TO WORK, AS WELL AS IN CASE OF DEATH, THERE ALSO APPLY THE SPECIAL PROVISIONS RE COMPENSATION OF WORKMEN WHO SUFFERED ACCIDENTS IN WORK." WITH THE ABOVE SECTION, LAW NUMBER 551 OF 1915 AS AMENDED IS INCORPORATED BY REFERENCE.

ARTICLE 3 OF LAW 551/1915 PROVIDES ITSELF THE FORMULA FOR THE CALCULATION OF COMPENSATION AS FOLLOWS:

A. PERSONAL INJURIES

I. TOTAL PERMANENT DISABILITY IN CASE OF TOTAL PERMANENT DISABILITY THE COMPENSATION CONTAINS SIX YEARS WAGES (. . .) AND IF THE TOTAL OF THE SIX YEARS WAGES EXCEEDS ONE HUNDRED THOUSAND DRACHMAE, THE SUM OF ONE HUNDRED THOUSAND DRACHMAE IS ADDED TO THE ONE FOURTH OF SUCH EXCESS.

II. PARTIAL PERMANENT DISABILITY IN CASE OF PARTIAL PERMANENT DISABILITY IT CONTAINS SIXFOLD THE AMOUNT BY WHICH IT WAS REDUCED OR MAY BE REDUCED THE ANNUAL WAGES OF THE INJURED (. . .) ON REDUCTION EXCEEDING ONE HUNDRED THOUSAND DRACHMAE THE SUM OF ONE HUNDRED THOUSAND DRACHMAE IS ADDED TO THE ONE FOURTH OF SUCH EXCESS.

III. FATAL ACCIDENTS

IN CASE OF DEATH THE COMPENSATION CONTAINS FIVE YEARS WAGES (. . .) IF THE FIVE YEARS WAGES EXCEED ONE HUNDRED THOUSAND DRACHMAE, THE SUM OF ONE HUNDRED THOUSAND DRACHMAE IS ADDED TO THE ONE FOURTH OF SUCH EXCESS.

3. *REPATRIATION AND RELATED EXPENSES*

ARTICLE 73 OF THE CODE OF PRIVATE MARITIME LAW PROVIDES: "THE SEAMAN ON TERMINATION OF HIS CONTRACT OF EMPLOYMENT IS ENTITLED TO REPATRIATION".

4. *FUNERAL EXPENSES*

LAW NUMBER 366 OF 1968 RATIFIED INTERNATIONAL TREATY NUMBER 55 OF GENEVA EXECUTED ON 6TH OCTOBER 1936. ARTICLE 7 OF SAID TREATY PROVIDES:

"THE SHIPOWNER MUST BEAR THE FUNERAL EXPENSES IN CASE OF DEATH ON BOARD, OR IN CASE OF DEATH ASHORE, WHEN THE DECEASED IS AT THE TIME OF DEATH ENTITLED TO CARE BY SHIPOWNER".

WE INTEND TO INCLUDE THESE PERTINENT PROVISIONS IN A LETTER WITH OUR CERTIFICATION AND MAIL IT TO YOU TOMORROW UNLESS YOU WOULD LIKE A CLARIFICATION IN WHICH CASE PLS TELEX BY RETURN. CONFIRM OUP CONSTANTINE LASCARATOS OR OUR DIMITRI ASTRAS COULD COME TO PHILADELPHIA BUT WOULD APPRECIATE TO GIVE US ESTIMATE OF POSSIBLE DATES.

BEST REGARDS
C.A.T. LASCARATOS
G AND N. L. DANIOLOS +
PALMBEE PHA
216021 DAND GR
VIA ITT
PCA APR 29 0431 +
PALMBEE PHA
216021 DAND GR
MSGE 4/121
APRIL 19, 1980
ATTN: VERNON C. MILLER, ESQ.
"CORINTHOS"

PLS REFER TO MY TLX OF YESTERDAY, QUOTING PERTINENT PARTS OF APPLICABLE GREEK LAWS ON SUCH CREW MATTERS AS LOSS OF PERSONAL EFFECTS, REPATRIATION AND RELATED EXPENSES, COMPENSATION FOR PERSONAL INJURIES AND DEATH, AND FUNERAL EXPENSES.

I HEREBY CERTIFY THAT THE ABOVE QUOTED PROVISIONS OF THE GREEK LAW ARE TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF AS A MEMBER OF THE BAR OF ATHENS OF THE REPUBLIC OF GREECE.

THAT IS:

LOSS OF PERSONAL EFFECTS UNDER ARTICLE 63 OF LAW NS 3816 OF 1953 RATIFYING THE CODE OF PRIVATE MARITIME LAW, OF COMPENSATION FOR INJURIES TO INJURED SEAMEN AND NEXT

OF KIN IN CASE OF FATAL INJURIES UNDER ARTICLE 66 SECTION 5 OF THE ABOVE CODE OF PRIVATE MARITIME LAW WHICH INCORPORATES LAW NS 551 OF 1915 AS AMENDED REPATRIATION AND RELATED EXPENSES UNDER ARTICLE 73 OF THE ABOVE CODE OF PRIVATE MARITIME LAW AND FUNERAL EXPENSES UNDER ARTICLE 7 OF THE INTERNATIONAL TREATY NS 55 OF GENEVA EXECUTED 6 OCTOBER 1936. RATIFIED BY LAW NS 366 OF 1968.

SIGNED

CONSTANINE A T LASCARATOS

C AND N L DANIOLOS

+

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PALMBEE PHA

216021 DAND GRM

Order of the United States District Court for the Eastern District of Pennsylvania, in the Matter of The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability, Civil Action No. 75-364; in the Matter of The Complaint of Villaneuva Compania Naviera, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration from and Limitation of Liability, Civil Action No. 75-2110, Filed July 18, 1980.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A. No. 75-364

In the Matter
of
The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

C.A. No. 75-2110

In the Matter
of
The Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability

ORDER

1. Judgment is entered in favor of BP/Sohio against the Queeny interests in the amount of $16,188,531.00.

2. For all claims as stated herein in the foregoing Memorandum Opinion, we enter judgment in favor of the Corinthos interests against the Queeny interests in the total amount of $3,073,934.80.

IT IS SO ORDERED.

/s/ CHARLES R. WEINER
Charles R. Weiner

Judgment of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company, as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability and Villaneuva Compania Naviera, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company, and The William Powell Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444; BP Oil Inc. and Sohio Petroleum Company, Appellants in No. 80-2367; In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Compny and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants v. British Petroleum, Ltd., BP Oil Inc. and Sohio Petroleum Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444, Filed August 13, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2366, 80-2367, 80-2444

In the Matter of:
The Complaint of Bankers Trust Company As Owner-Trustee and Monsanto Company As Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., AMOCO OVERSEAS OIL COMPANY, and AMOCO TRANSPORT COMPANY,

Third-Party Plaintiffs

v.

BETHLEHEM STEEL CORPORATION, GENERAL ELECTRIC COMPANY, and THE WILLIAM POWELL COMPANY,

Third-Party Defendants

Villaneuva Compania Naviera, S.A.,
Appellant in Nos. 80-2366, 80-2444

BP Oil Inc. and Sohio Petroleum Company,
Appellants in No. 80-2367

(D. C. Civil No. 75-0364)

In the Matter of:

Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability

ROYAL GLOBE INSURANCE COMPANY,
Intervenor Plaintiff

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defendants

v.

BRITISH PETROLEUM, LTD.; B.P. OIL INC. and SOHIO PETROLEUM COMPANY,
Third-Party Defendants

Villaneuva Compania Naviera, S.A.,
Appellant in Nos. 80-2366, 80-2444

(D. C. Civil No. 75-2110)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: SEITZ, *Chief Judge* and ALDISERT and GIBBONS, *Circuit Judges*

JUDGMENT

These causes came on to be heard on the records from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on April 22, 1981.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court filed July 18, 1980, be, and the same is hereby affirmed, insofar as it found that the market value of the Corinthos at the time of the collision was $2.73 million and denied Villaneuva prejudgment interest; reversed insofar as it denied BP/Sohio's claim for prejudgment interest and awarded postjudgment interest at the legal rate of interest in Pennsylvania, and the cause remanded to the said district court for further proceedings consistent with this opinion. Costs taxed against appellees.

Attest:

/s/ SALLY MAVOS
Clerk

August 13, 1981

Amended Judgment of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company, as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability and Villaneuva Compania Naviera, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company, and The William Powell Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444; BP Oil Inc. and Sohio Petroleum Company, Appellants in No. 80-2367; In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants v. British Petroleum, Ltd., BP Oil Inc. and Sohio Petroleum Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444, Filed October 8, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2366, 80-2367, 80-2444

In the matter of:
The Complaint of Bankers Trust Company As Owner-Trustee and Monsanto Company As Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., AMOCO OVERSEAS OIL COMPANY, and AMOCO TRANSPORT COMPANY,

Third-Party Plaintiffs

v.

BETHLEHEM STEEL CORPORATION, GENERAL ELECTRIC COMPANY, and THE WILLIAM POWELL COMPANY,

Third-Party Defendants

Villaneuva Compania Naviera, S.A.,
Appellant in Nos. 80-2366, 80-2444

BP Oil Inc. and Sohio Petroleum Company,
Appellants in No. 80-2367

(D. C. Civil No. 75-0364)

In the Matter of:
Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability

ROYAL GLOBE INSURANCE COMPANY,
Intervenor Plaintiff

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defendants

v.

BRITISH PETROLEUM, LTD.; B.P. OIL INC. and SOHIO PETROLEUM COMPANY,
Third-Party Defendants

Villaneuva Compania Naviera, S.A.,
Appellant in Nos. 80-2366, 80-2444

(D. C. Civil No. 75-2110)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: SEITZ, *Chief Judge* and ALDISERT and GIBBONS, *Circuit Judges*

AMENDED JUDGMENT

These causes came on to be heard on the records from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on April 22, 1981.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court filed July 18, 1980, be, and the same is hereby affirmed, insofar as it found that the market value of the Corinthos at the time of the collision was $2.73 million and denied Villaneuva prejudgment interest; reversed insofar as it denied BP/Sohio's claim for prejudgment interest and awarded postjudgment interest at the legal rate of interest in Pennsylvania, and the cause remanded to the said district court for further proceedings consistent with this opinion. Costs taxed against appellees in No. 80-2367 and costs taxed against appellant in Nos. 80-2366 and 80-2444.

ATTEST:

Clerk

October 8, 1981

Order of the United States Court of Appeals for the Third Circuit Granting Motion for Extension of Time to File Petition for Rehearing, In the Matter of: The Complaint of Bankers Trust Company, as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability and Villaneuva Compania Naviera, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company, and The William Powell Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444; BP Oil Inc. and Sohio Petroleum Company, Appellants in No. 80-2367; In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants v. British Petroleum, Ltd., BP Oil Inc. and Sohio Petroleum Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444, Filed August 27, 1981.

August 25, 1981

Nos. 80-2366, 80-2367 & 80-2444

In the Matter of:

The Complaint of Bankers Trust Co., et al., and VILLANEUVA COMPANIA NAVIERA, S.A., et al., Third-Party Plaintiffs vs. BETHLEHEM STEEL CORP., ET AL., Third Party Defendants

(D. C. Civil No. 75-00364)

In the Matter of:

Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., etc.; ROYAL GLOBE INSURANCE CO., Intervenor Pltf; NATIONAL GRANGE MUTUAL INSURANCE CO., ET AL. vs. BETHLEHEM STEEL CORP., ET AL., Third Party Defts. vs. BRITISH PETROLEUM, LTD., ET AL., Third Party Defts.

(D. C. Civil No. 75-2110)

Villaneuva Compania Naviera, S.A.,

Appellant

Nos. 80-2366 & 80-2444

In the Matter of:

The Complaint of Bankers Trust Company, et al. and VILLANEUVA COMPANIA NAVIERA, S.A., et al., Third-Party Plaintiffs, vs. BETHLEHEM STEEL CORPORATION, et al., Third-Party Defendants

BP Oil Inc. and SOHIO Petroleum Company,

Appellant

(D. C. Civil No. 75-00364)

No. 80-2367

SEE ATTACHED SHEETS FOR COMPLETE CAPTIONS

Present: SEITZ, *Chief Judge.*

1. Motion by appellees, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., for an extension of time to file petition for rehearing from August 27, 1981, to and including September 28, 1981, in which it states that counsel for Villaneuva Compania Naviera and BP/Sohio do not oppose this motion,

in the above-entitled case in which the opinion was filed and the judgment entered on August 13, 1981.

Respectfully,

/s/ SALLY MRVOS, mgs
Sally Mrvos, *Clerk*

The foregoing Motion is granted.

By the Court,

/s/ SEITZ
Chief Judge

Dated: August 27, 1981

Order of the United States Court of Appeals for the Third Circuit Denying Petition for Rehearing, In the Matter of: The Complaint of Bankers Trust Company, as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability and Villaneuva Compania Naviera, S.A., Amoco Overseas Oil Company, and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company, and The William Powell Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444; BP Oil Inc. and Sohio Petroleum Company, Appellants in No. 80-2367; In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants v. British Petroleum, Ltd., BP Oil Inc. and Sohio Petroleum Company, Third-Party Defendants; Villaneuva Compania Naviera, S.A., Appellant in Nos. 80-2366, 80-2444, Filed October 8, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2366
No. 80-2444
No. 80-2367

In the Matter of: The Complaint of Bankers Trust Co., et al. and Villaneuva Company Naivera, S.A., et al. Third Party Plaintiffs v. Bethlehem Steel Corp., et al. Third Party Defendants (D.C. Civil No. 75-00364) In the Matter of: Complaint of Villaneuva Compania Naviers, S.A., etc., Royal Globe Insurance Co., Intervenor Pltf., National Grange Mutual Insurance Co., et al. v. Bethlehem Steel Corp., et al., Third Party Defts. v. British Petroleum, Ltd., et al., Third Party Defts.

(D.C. CIVIL No. 75-211)

Villaneuva Compania Naviera, S.A., Appellant
Nos. 80-2366 & 80-2444

In the Matter of: The Complaint of Bankers Trust Company, et al. and Villaneuva Compania Naviera, S.A., et al., Third-Party Plaintiffs v. Bethlehem Steel Corporation, et al., Third-Party Defendants,

BP Oil, Inc., et al., Appellants *No. 80-2367*

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, WEIS, and SLOVITER, *Circuit Judges*.

The petition for rehearing filed by Appellants and Cross-Appellees, Bankers Trust Co., et al., in the above entitled cases having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ SEITZ
Chief Judge

DATED: October 8, 1981

Order of the Supreme Court of the United States Extending Time to File a Petition for Writ of Certiorari, Bankers Trust Company, et al, Petitioners v. BP Oil Inc., et al, Respondent, No. A-581.

SUPREME COURT OF THE UNITED STATES

No. A-581

BANKERS TRUST COMPANY, ET AL.,
Petitioners

v.

BP OIL, INC. AND SOHIO PETROLEUM COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 7, 1982.

/s/ WILLIAM J. BRENNAN, JR.
William J. Brennan, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 28th
day of: December, 1981

DISCLOSURE STATEMENT IN COMPLIANCE WITH RULE 28.1 OF THE SUPREME COURT RULES

Bankers Trust New York Corporation is the parent of Bankers Trust Company. Following are the affiliates of Bankers Trust Company:

Bankers Trust Company of Albany, N.A.
    BT Data Corp.
Bankers Trust Company of Hudson Valley, N.A.
Bankers Trust Company of Western New York
Farmers National Bank of Malone
BT Advisors, Inc.
BT Bancshares, Inc.
BT Capital Corporation
BT Credit Co. Inc.
BT Investment Managers, Inc.
BT Leasing Corp.
BT Leasing Services, Inc.
BT Southwest, Inc.
Coleman Factors Corporation (inactive)
Sackman-Gilliland Corporation
UBAF Arab American Bank

Following are the subsidiaries of Bankers Trust Company:

Bankers Trust International (Miami) Corporation
Bankers Trust International (Pacific) Corporation
Bankers Trust International (Midwest) Corporation
Bankers Trust International (Southwest) Corporation
Bankers International Corporation
    B.T. International (Delaware), Inc.
Bankers Company Inc. (inactive)
Bankers Company of New York
    Bankers Trustee & Executor Co. Ltd.

Bankers Trust Nominees, Ltd.
    Mount Pleasant Developments Ltd.
    Purley Beeches Developments Ltd.
BT Aeron Inc.
BT Barges Inc.
BT Corp.
    BT Financial Corporation
BT Pyramid Corp.
    BT Equipment Leasing, Inc.
Pyramid Nominees Ltd.

Following are the real estate subsidiaries of Bankers Trust Company:

Anvers Investors, Inc.
Bercy Investors, Inc.
Duroc Investors, Inc.
Ero Properties, Inc.
Ero Properties Pacific, Inc.
Jasmin Investors, Inc.
Lessprop Investors, Inc.
Lessprop Investors Atlantic, Inc.
Lourmel Investors, Inc.
Melba Investors Atlantic, Inc.
Melba Investors Northeast, Inc.
Melba Investors Northwest, Inc.
Melba Investors Pacific, Inc.
Melba Investors Southeast, Inc.
Melba Investors Southwest, Inc.
Pecos Investors, Inc.
Pecos Investors Pacific, Inc.
Pelleport Investors, Inc.
Protean Investors, Inc.
Raspail Investors, Inc.
R.B. Corp.

Realprop Investors Atlantic, Inc.
Realprop Investors Colorado, Inc.
Realprop Investors Pacific, Inc.
Reo Resources, Inc.
Reo Resources Atlantic, Inc.
Sablons Investors, Inc.
Sarel Investors Atlantic, Inc.
Sarel Investors Florida, Inc.
Sarel Investors Pacific, Inc.
Valley Forge Estates, Inc.
Varenne Investors, Inc.
Vikell Investors, Inc.
Vikell Investors Pacific, Inc.
Wagram Investors, Inc.

Monsanto Company has no parent company or affiliates. Following are the subsidiaries of Monsanto Company:

ACM Services, Inc.
Collagen Corporation
Fisher Controls International, Inc.
Soperton Gum Market, Inc.
Agerquim, S.A. de C.V.
Australian Fluorine Chemicals Pty. Limited
R. H. Cole Limited
Companhia Brasileira de Estireno
Companhia Brasileira de Plasticos Monsanto
Daishin Kogyo K.K.
Fisher Controls Limited
Goyana, S.A. Industrias, Brasileiras de Materias Plasticas
Hydrocarbon Products Pty. Ltd.
Industrias Resistol, S.A.
Korag Company Limited

Mitsubishi Monsanto Chemical Company
Monsanto Chemicals of India Limited
Monsanto (Malaysia) Sendirian Berhad
Polyamide Intermediates Limited
Revertex Industries (N.Z.) Ltd.
Revinex Australia Limited
Vencel Resil Ltd.

Chas. Kurz & Co., Inc. is the parent of Keystone Shipping Co. Following are the affiliates of Keystone Shipping Co.:

Antietam Tankers, Inc.
Baldbutte Shipping Company
Chestnut Shipping Company
Chilbar Shipping Company
Fredericksburg Shipping Company
Keygaz, Inc.
Margate Shipping Company
Meton Tankers, Inc.
Wilmington Liquid Bulk Terminals, Inc.

There are no subsidiaries of Keystone Shipping Co.

Opposition

Supreme Court, U.S.
FILED
APR 7 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1670

IN THE

Supreme Court of the United States

October Term, 1981

IN THE MATTER OF:
Complaint of BANKERS TRUST COMPANY, as Owner Trustee and MONSANTO COMPANY, as Chartered Owner and KEYSTONE SHIPPING CO., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability

BANKERS TRUST COMPANY, MONSANTO COMPANY and KEYSTONE SHIPPING CO.,
Petitioners,

BP OIL, INC. and SOHIO PETROLEUM COMPANY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals of the Third Circuit

BRIEF FOR BP OIL, INC. AND SOHIO PETROLEUM COMPANY IN OPPOSITION

BENJAMIN F. STAHL, JR.
Counsel of Record for Respondents

EDWARD V. CATTELL, JR.
STUART M. GOLDSTEIN
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Attorneys for Respondents

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

QUESTION PRESENTED

Need the United States Supreme Court review an award of prejudgment interest in an admiralty case where the award conforms to the standards uniformly adopted by all Circuits?

PARTIES

Bankers Trust Company, Monsanto Company and Keystone Shipping Co., as owners, charterers and operators, respectively, of the S.S. EDGAR M. QUEENY (hereinafter collectively "Keystone"), Petitioners.

BP Oil Inc. as operator/lessee, and Sohio Petroleum Company [1] as owner/lessor of a pier and refinery facility at Marcus Hook, Pennsylvania (hereinafter "BP/SOHIO"), Respondents.

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1. BP Oil, Inc. and Sohio Petroleum Company are wholly owned subsidiaries of the Standard Oil Company (Ohio), a publicly owned company. On December 23, 1977, the name of the Sohio Petroleum Company was changed to Sohio Natural Resources Company, which, in turn, was renamed Sohio Alaska Petroleum Company on December 31, 1979. In excess of 50% of the common stock of the Standard Oil Company (Ohio) is owned by British Petroleum (Overzee) B. V., a Dutch company which is a 100% owned subsidiary of British Petroleum B. V., a Dutch company, which in turn is a 100% owned subsidiary of the British Petroleum Company, Ltd., a publicly owned British company.

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28 U. S. C. § 1333 2

OPINIONS

The Opinion of the United States District Court for the Eastern District of Pennsylvania is reported as: *Complaint of Bankers Trust Co.*, 503 F. Supp. 350 (E. D. Pa. 1980). (A21)

The Opinion of the United States Court of Appeals for the Third Circuit is reported as: *Matter of Bankers Trust Co.*, 658 F. 2d 103 (3d Cir. 1981). (A1)

JURISDICTION

Respondents acknowledge and accept the statement of jurisdiction presented by petitioners, Keystone, at page 1 of 81-1670.

STATEMENT OF THE CASE

This case arises out of a collision which occurred on the Delaware River at Marcus Hook, Pennsylvania, during the early morning hours of January 31, 1975, when the chemical carrier S.S. EDGAR M. QUEENY (hereinafter QUEENY), while making a turn in the river, struck the steam tanker S.T. CORINTHOS (hereinafter CORINTHOS), as she was discharging a cargo of crude oil at the BP/SOHIO terminal, Marcus Hook, Pennsylvania. The resulting explosion and fire damaged the QUEENY, destroyed and sank the CORINTHOS, caused extensive property damage to the BP/SOHIO terminal as well as surrounding property owners in the Marcus Hook area, and caused numerous deaths and injuries.

As a result of this collision, Keystone, owners and operators of the QUEENY, along with Villaneuva Compania Naviera S.A. (hereinafter Villaneuva), owner and operator of the CORINTHOS, filed petitions for exoneration from or limitation of liability [2] pursuant to the Limitation of Liability Act.[3] Both Keystone and Villaneuva were damage claimants in each other's limitation proceeding as were those who suffered injury or loss, including BP/SOHIO owner and operator of the terminal where the CORINTHOS was located.[4]

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2. United States District Court for the Eastern District of Pennsylvania, Civil Action Nos. 75-364 and 75-2110. The jurisdiction of the district court was exercised pursuant to the admiralty and maritime jurisdiction of the federal courts. 28 U. S. C. § 1333 (1949).

3. 46 U. S. C. § 183 et seq. (1976).

4. In addition to these proceedings, a product liability action was filed by BP/SOHIO against Bethlehem Steel Corporation, General Electric Company and The William Powell Company. See Complaint of BP Oil, Inc. and Sohio Petroleum Company, filed July 8, 1977, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 77-2362. Villaneuva filed a third-

At trial on the liability issues raised in the petitions for limitation and the claims asserted by the three major parties,[5] the district court denied Keystone's petition for limitation of liability.[6] At trial on the damage issues, the district court entered judgment in favor of BP/SOHIO and against Keystone in the amount of $16,188,531.00 and denied BP/SOHIO prejudgment interest.[7]

BP/SOHIO appealed to the United States Court of Appeals for the Third Circuit. On August 13, 1981, that

4. (Cont'd.)

party complaint in the QUEENY Limitation proceeding against Bethlehem Steel Corporation, General Electric Company and the William Powell Company. See Third Party Complaint of Villaneuva Compania, Naviera, S.A., filed July 19, 1978, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 75-364.

These defendants, collectively referred to as the product or third party defendants, variously participated in the design and construction of the QUEENY, her turbine set and controls, and the astern guardian valve. Upon motion by the product liability/third party defendants at the time of trial, the product liability action was severed and stayed pending the resolution of the limitation actions. *Complaint of Bankers Trust Co.*, 651 F. 2d 160 (3d Cir. 1980) at 166, n. 5.

5. The issue of damages was bifurcated from the issue of liability. *Complaint of Bankers Trust Company*, 503 F. Supp. 350, 351 (E. D. Pa. 1980); see A22. The appeal leading to this petition has arisen from the trial on damages. Petitions for certiorari on the limitation result have been denied.

6. 503 F. Supp. at 351-352; see A22-23.

7. 503 F. Supp. at 353; see A26, A47. "At that trial, BP/SOHIO and the QUEENY interests submitted to the court a document entitled 'Offer of Proof of Claim in Lieu of Trial.' That document contained a stipulation authorizing the court to enter judgment at the conclusion of the damages trial in BP/SOHIO's favor against the QUEENY interests." 503 F. Supp. at 352; see A23.

court, through Chief Justice Seitz, Judge Aldisert and Judge Gibbons, reversed the district court's denial of prejudgment interest to BP/SOHIO.[8] The court further established 10.5% as the rate of prejudgment interest. The court remanded the action to the district court for a determination of the dates from which interest was to run.

Following a denial of a petition for rehearing en banc, Keystone filed a petition for certiorari. This response follows.

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8. 658 F. 2d at 111; see A20.

SUMMARY OF ARGUMENT

The argument on behalf of Keystone is based solely upon the erroneous assumption that the Court of Appeals for the Third Circuit improperly relied upon facts not of record. The Appellate Court did not rely, nor had it the need to rely, upon non-record facts to overturn the district court's rulings on the award of pre-judgment interest to BP/SOHIO.

ARGUMENT

Prejudgment interest in admiralty is to be awarded unless there are exceptional circumstances which would make such an award inequitable. *See, e.g., Alkmeon, Naviera, S.A. v. M/V Marina L*, 633 F. 2d 789, 797 (9th Cir. 1980); *Noritake Co. v. M/V Hellenic Champion*, 627 F. 2d 724, 728 (5th Cir. 1980). Discretion to deny prejudgment interest is limited to those cases where exceptional circumstances exist. The burden of proving that such circumstances exist falls upon the party seeking to deny prejudgment interest. In this instance, Keystone had that burden.

The trial on damages was a trial in name only. Neither side presented any witnesses; the amount of principal damages had been agreed prior to trial and was presented in the form of a written, unopposed offer of proof. BP/SOHIO had a live witness prepared to testify concerning prejudgment interest, but, at the suggestion of the trial court, the evidence on prejudgment interest was presented in the form of an oral offer of proof, to which counsel for Keystone stipulated.[9]

Although Keystone contested BP/SOHIO's right to prejudgment interest prior to the trial, the sole argument against an award was the variation between the original BP/SOHIO claim and the agreed provable damages. In fact, Keystone did not contend that BP/SOHIO's conduct delayed settlement, noting, to the contrary that:

> "Another claimant to this limitation proceeding, BP/SOHIO, has an immensely complex claim which is supported by several file cabinets full of documents.

9. Counsel for Villaneuva, also claimants in the proceedings, presented evidence in the form of deposition testimony regarding the value of the CORINTHOS and stipulations concerning the prime rate and certain payments made to CORINTHOS crewmen under Greek law.

> Nevertheless, BP/SOHIO was able to produce supports for its claim almost four years ago. The production of these supports has enabled all of the parties to conduct discovery and meaningful settlement discussions so that there is a strong possibility that this complex damage claim may be agreed prior to trial." Memorandum of Keystone On Prejudgment Interest at 2-3, presented to the Court at trial (N/T 99a).

Keystone did not place any evidence in the record tending to show that BP/SOHIO delayed the resolution of the case, either by failing to press their claims vigorously or by overvaluing their claim to such an extent that an earlier settlement was not possible.

The Court of Appeals examined the record, limited as it is, and concluded that there was no support for the proposition that BP/SOHIO's conduct delayed the trial of this case, or that BP/SOHIO's original estimate of damages precluded an earlier settlement. To the contrary, the Court of Appeals held that the trial court did not find BP/SOHIO at fault for the five year span between the accident and the trial; [10] but, despite this finding, the lower court had improperly penalized BP/SOHIO for the delay. The Appellate Court found that without a finding that BP/SOHIO was specifically responsible for the delay, there was no rationale to support a denial of prejudgment interest on this ground.

The only fact of record which the Court of Appeals addressed was the difference between BP/SOHIO's original damage estimate and the final, agreed provable damages. The Court of Appeals found this variance "not suffi-

10. In fact, the trial court specifically found: "An examination of the records reveals that a finger cannot be pointed at any one party, accusing it alone of unreasonable delay." 503 F. Supp. 350, 353 (E. D. Pa. 1980). (A25)

cient by itself to support a conclusion that BP/SOHIO acted in bad faith." (A15). Since there was no other evidence of record, as the Keystone petition points out, there was no other evidence to support the finding of extraordinary circumstances necessary to deny an award of prejudgment interest.

Since the course of the settlement negotiations was not of record (and it is questionable whether it would have even been proper to make them part of the record), BP/SOHIO supplied to the Court of Appeals, in its appellate briefs, a synopsis of the settlement postures of the various parties. As the Appeals Court noted, although this was not part of the record, Keystone did not challenge, at oral argument, the accuracy of this synopsis. (A16). *See, United States v. I. H. Hammerman, II,* 528 F. 2d 326, 328 n. 4 (4th Cir. 1975).

However, the Court of Appeals made it abundantly clear that it did not rely upon facts not of record to decide the case. (A14-16). Therefore, there was no impropriety by that Court in its review and reversal of the trial court's opinion with respect to the allowance of prejudgment interest. This case is not one which calls for the exercise of this Court's power of supervision. The petition should be denied.

CONCLUSION

There being no compelling reason for this Court to review the actions of the Court of Appeals in this case, the petition should be denied.

Respectfully submitted,

BENJAMIN F. STAHL, JR.
Counsel of Record for Respondents

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